

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: BENEDICT VINCENT SOKOLOWSKI	:	CHAPTER 13
and LYNDIA JO SOKOLOWSKI	:	
Debtors	:	
	:	
JACK N. ZAHAROPOULOS,	:	
STANDING CHAPTER 13 TRUSTEE	:	
Movant	:	
	:	
BENEDICT VINCENT SOKOLOWSKI	:	
and LYNDIA JO SOKOLOWSKI	:	
Debtors/Respondents	:	CASE NO. 5:18-bk-03468-MJC

TRUSTEE’S MOTION FOR RECONSIDERATION
OF ORDER DISMISSING CASE

AND NOW, this 13th day of April, 2022, comes Jack N. Zaharopoulos, Standing Chapter 13 Trustee, by and through his attorney, Agatha R. McHale, and files this Motion to Reconsider the Order entered on April 6, 2022, dismissing Debtors’ case, respectfully stating in support thereof:

1. At the time of the filing of the above-captioned proceeding, Debtors owned real property known as 124 Falling Water Court, Bushkill, PA (“the Property”).
2. Schedule A valued the Property at \$400,000.00, and Debtors provided the Trustee with a Comparable Market Analysis in support thereof.
3. On March 16, 2022, Debtors filed a Motion to Approve Sale of the Property for the sum of \$775,250.00.
4. The Motion to Approve Sale alleged that, at the time of the filing of the Petition, all of the equity in the Property was exempt pursuant to 11 U.S.C. §522(d), and the same was reflected on Schedule C. To the contrary, Debtors did not claim a homestead exemption under Section 11 U.S.C. § 522(d)(1). A copy of Schedule C, is attached hereto, made a part hereof, and labeled as Exhibit “A.”

5. On March 18, 2022, Trustee filed a Limited Objection to Debtors' Motion to Approve Sale of the Property. The Objection noted that no equity existed in the Real Property at the time of filing because the balance of the mortgage and taxes exceeded the value of the Property.

6. Trustee averred that the increase in value of the Property from \$400,000.00 to \$775,250.00 is an asset of the bankruptcy estate, and accordingly, requested that the net proceeds from the sale be paid to the Trustee to the extent needed to pay the allowed unsecured claims in full.

7. On April 4, 2022, Debtors filed a Motion to Dismiss.

8. On April 6, 2022, the Court entered an Order granting Debtors' Motion to Dismiss Chapter 13 case.

9. Rule 9024, which incorporates Rule 60 of the Federal Rules of Civil Procedure, governs requests to reconsider or vacate an order dismissing case.

10. As grounds for relief, Trustee contends that Debtors acted in bad faith by attempting to sell the Property during the pendency of the case without proposing to pay the allowed unsecured claims in full, and then moving for a voluntary dismissal of their case after the Trustee objected to the sale.

11. As further grounds for relief, Trustee cites the Supreme Court's decision in *Marrama v. Citizens of Massachusetts*, 549 U.S. 365, 127 S. Ct. 1105, 166 L.Ed. 2d 956 (2007), where the Court found bankruptcy judges may "take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Id.* at 374-375. Additionally, the Third Circuit has noted that "[t]here is a split in authority as to just how mandatory [a debtor's right to dismiss under § 1307(b)] really is" and that "the Third Circuit has yet to weight in." *In re Ross*, 858 F.3d 779, 784 (3d Cir. 2017).

12. The Trustee's position is similar to that stated by the bankruptcy court in *In re Armstrong*: "Section 1307 should not be used as an 'escape hatch' to provide a debtor with immunity from his conduct and avoid the consequences of § 1307(c) and the requirement that all debtors must play by the rules." 408 B.R. 559, 560 (Bankr. E.D.N.Y. 2009)

WHEREFORE, Trustee respectfully requests the Court to reconsider and vacate the Order dismissing case; and set a hearing on Debtors' Motion to Dismiss.

Respectfully submitted:

Jack N. Zaharopoulos
Standing Chapter 13 Trustee
8125 Adams Drive, Suite A
Hummelstown, PA 17036
(717) 566-6097

BY: /s/Agatha R. McHale
Attorney for Trustee

CERTIFICATE OF SERVICE

AND NOW, this 13th day of April, 2022, I hereby certify that I have served the within Motion by electronically notifying parties or by depositing a true and correct copy of the same in the United States Mail at Hummelstown, Pennsylvania, postage prepaid, first class mail, addressed to the following:

Patrick Best, Esquire
18 N. 8th Street
Stroudsburg, PA 18360

/s/Deborah A. Behney
Office of Jack N. Zaharopoulos
Standing Chapter 13 Trustee